



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: May 31, 2011
TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board
FROM: David H. Nispel, General Counsel
SUBJECT: Status of Pending Legal Cases

This memo is for informational purposes only. No Board action is required.

This memorandum is presented to inform Board members about the status of pending legal cases involving the Department of Employee Trust Funds (ETF) and the retirement boards. In order to maintain confidentiality for Wisconsin Retirement System members, the names of the parties and case numbers are not identified in this memorandum.

Reminder: The sole purpose of this memorandum is to inform Board members of litigation in which the Boards and ETF are parties, not to provide legal advice concerning the cases listed. Each of the cases is being handled by an assistant attorney general from the Department of Justice. If you have any questions about a particular case, I can provide the name of the attorney handling the case.

As of May 31, 2011, there were 4 cases, which can be divided into the following categories:

Circuit Court Cases (4)

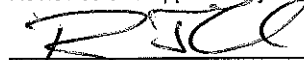
Employee Trust Funds Board is a Party 2
Department of Employee Trust Funds is a Party
(ETF Board is not a party) 2

CIRCUIT COURT CASES

Case No. 1: ETF Board is a Party

Issue – Member is appealing the ETF Board's final decision in an administrative appeal. The Board affirmed ETF's determination that the member should not receive pre-1990 WRS service credits for employment with Milwaukee County.

Reviewed and approved by Robert J. Conlin, Deputy Secretary.


Signature

6/3/11
Date

Board	Mtg Date	Item #
Jl	6.23.11	5D

Summary – Plaintiff asserts the Board's final decision:

- Avoids crucial facts relative to the case.
- Misapplies law.
- Is against the weight of the evidence.
- Is misleading.
- Is inequitable and unjustly enriches the State to the detriment of the plaintiff and family.

Status – On April 19, 2011, a Decision and Order was issued. The decision of the Board was affirmed and the petition was dismissed.

Attorney – DOJ attorney

Case No. 2: ETF is a Party

Issue – The payment of death benefits arising from the death of a WRS member. Plaintiff asserts ETF was negligent in having the check made payable in the name of the beneficiary, rather than to the *estate* of the beneficiary.

Summary – Plaintiff alleges that as a result of ETF's failure to properly make the check payable to the estate of the beneficiary, plaintiff was without knowledge that money left to the beneficiary should have been deposited into a separate guardianship account. Plaintiff alleges that its lack of knowledge that the money disbursed from WRS member's estate was to go to the estate of the beneficiary rather than the beneficiary, individually, has left it potentially open to liability.

Status – On April 20, 2011, the case was dismissed. There was a settlement reached among the other parties.

Attorney – DOJ attorney

Case No. 3: ETF is a Party

Issue – This case involves the payment of death benefits arising from the death of a WRS member. Plaintiff demands judgment against ETF for the 50% of the death benefits it holds under the pension plan it administered for the member, together with taxable costs and disbursements.

Summary – Plaintiff asserts that such conduct on the part of the WRS member in failing to designate the plaintiff as the primary beneficiary of the death benefit under the pension plan administered by the ETF violates the plaintiff's marital property rights in such death benefit. Plaintiff further asserts that the defendant and ETF, if they have received them and/or possess them, hold 50% of such property in constructive trust for the plaintiff pursuant to Wis. Stats. § 766.70 (6) (b).

Status – Motion filed to dismiss ETF from the case.

Attorney – DOJ attorney

Case No. 4: ETF Board is a Party

Issue – The ETF Board affirmed ETF's determination concluding that a \$25,000 payment made to the plaintiff was not earnings and the \$25,000, even if it was earnings, should not be attributed to the 2004-2005 fiscal year.

Summary – Plaintiff asserts that the Board's final decision:

- Erroneously interpreted a provision of law in finding that the \$25,000 paid to plaintiff did not constitute earnings under Wis. Stats. § 40.02(22); and in finding that the payment was excluded under Wis. Stats. 40.02(22)(b)8. and Wis. Stats. § 40.02(22)(10).
- Erroneously interpreted a provision of law in concluding that, under Wis. Stats. § 40.02(22)(a), bonus payments are reported as received in the year in which they are awarded.
- Finding that the contractual language in the Amended Contract indicated that the \$25,000 payment to the plaintiff was not a bonus or raise is not supported by substantial evidence in the record and is contrary to the uncontroverted admissible evidence of record.

Status – A briefing schedule was issued.

Attorney – DOJ attorney

Staff will be available at the June 23, 2011, Board meeting to answer questions.